

Exhibit A



Deposition of:
Thomas Kinney , M.D.

June 17, 2017

In the Matter of:
**In Re: Bard IVC Filters Products
Liability**

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1 before this deposition that I'm forgetting the name of,
2 and that had -- that had thousands of Bard documents on
3 it.

4 So the Dropbox was kind of limited, if you will,
5 entree -- entry, I guess, into the information. But
6 before this, there was another -- just about a week or
7 so -- in the last week or so, there was a pretty big
8 access with multi- -- a multiplicity of different -- and
9 that had Bard documents that had depositions. There
10 were -- There were thousands of different documents in
11 there.

12 Q. So let me just make sure I understand what
13 you're telling me.

14 About a week before today, you were given access to a
15 larger database that had many depositions and many Bard
16 documents --

17 A. Correct.

18 Q. -- is that right?

19 A. Correct.

20 Q. Before then you were given access to a Dropbox
21 file that contained approximately 20 depositions and some
22 limited number of Bard documents; is that correct?

23 A. Correct.

24 MR. JOHNSON: Form.

25 Go ahead.

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1 BY MR. BROWN:

2 Q. And will you please ballpark the number of Bard
3 documents that were in that Dropbox.

4 A. I'm going to guess 20.

5 Q. Okay. Was the material that was provided to you
6 in the Dropbox folder the material that you reviewed and
7 relied upon in providing the opinions that are contained
8 in your expert report in this litigation?

9 A. It was back-up material. The main source for my
10 document was the Kessler report.

11 Q. So the material that was provided to you on the
12 Dropbox, you're saying, was just some back-up information;
13 but the primary source of what you relied upon in
14 authoring your report was the Kessler report?

15 MR. JOHNSON: Form.

16 BY MR. BROWN:

17 Q. Is that right?

18 A. Let me clarify a little bit more, or I guess
19 embellish. So there -- For instance, there was a 510(k)
20 that I reviewed for the original Simon Nitinol filter.

21 There was deposition from Dr. Asch that was in there,
22 as I recall.

23 Q. Okay. And those were part of the Dropbox
24 materials?

25 A. Correct.

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1 Q. Would you agree that if you did ignore data that
2 weighs against the opinion that Bard's filters are
3 defective, that you would be applying the same level of
4 intellectual rigor in this case as you apply in your
5 private practice as a researcher and clinician?

6 MR. JOHNSON: Form.

7 THE WITNESS: I would say that I'm always
8 willing to look at data. If you have some data to show
9 me, I'd be happy to look at it and opine about it.

10 BY MR. BROWN:

11 Q. In drafting this report, did you take data and
12 information out of context?

13 A. I don't think so.

14 Q. If you did take data and information out of
15 context, would you agree that you wouldn't be applying the
16 same level of intellectual rigor to your work in this case
17 as you apply in your work as a clinician?

18 MR. JOHNSON: Form.

19 THE WITNESS: Again, I would say show me what
20 you don't agree with, and we'll look at it and make an
21 intelligent decision.

22 BY MR. BROWN:

23 Q. Okay. How was the report, which we marked as
24 Exhibit 4, prepared?

25 A. We basically used the document by Dr. Kessler is

1 what we did, and we were -- we were asked -- we were
2 tasked, actually, as interventional radiologists who were
3 academicians and involved with some of the writing
4 standards about IVC filters, and we were tasked to assess
5 the information that was provided by Bard about their
6 filters, and whether we thought that there was
7 transparency in that in our approach to, say, getting
8 consent for patients.

9 We were -- I lost my train of thought. Sorry.

10 MR. LOPEZ: If you need to refer to your report,
11 you can, by the way.

12 THE WITNESS: Yeah.

13 You know, as clinicians that have multiple years of
14 experience on IVC filters, we were, you know, able to make
15 opinions about, you know, what we thought was done. We
16 were able to assess the data that he presented, some of
17 the experimental data, that included lab experiments and
18 animal experiments.

19 Basically, it was listed as a permanent filter that
20 had -- that was supposed to act like permanent filters
21 that we had before.

22 My career and Anne Roberts' career spans the
23 transition in filters from permanent devices to retrieval
24 filters. And we were promised that the retrieval filters
25 would have the same sort of performance characteristics

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1 that our permanent devices had. And unfortunately, as the
2 experience -- as the clinical experience accrued with the
3 retrieval filters, we were finding that that assumption
4 was not true, and there was -- it turned out, you know, I
5 had done a plenary session right before Bard did your
6 major marketing release of the Recovery Nitinol filter.
7 The -- The SIR meeting in 2004 was in Phoenix, and we
8 were -- my plenary session was on venous thromboembolism.
9 And we were all excited about having the use of retrieval
10 filters. Because we all remembered that ten-year-old kid
11 that had a trauma that we put a filter in, and he had that
12 filter for multiple decades, and we never felt real
13 comfortable talking to that patient or his mother or
14 father about what was going to happen with this multiple
15 decades. Really, you kind of say, "We don't really know,"
16 and that's an answer that families like to hear because
17 they -- they assume you are the doctor, you know
18 everything and, you know, you should know these things.

19 So again, I lost my train of thought. Sorry.

20 BY MR. BROWN:

21 Q. All right. Well, I'm interested right now in
22 how the report actually was physically prepared. Because
23 we have three authors and several hundred pages of
24 material here, and I want to get a sense as to how putting
25 pen to paper or fingers to the typewriter this was

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1 A. This was three to four weeks.

2 Q. At the very back of the report there is an
3 Appendix A.

4 A. (Indicating.)

5 Yes.

6 Q. It's titled, "Facts and Data Considered."
7 Do you see that?

8 A. I do.

9 Q. Were you given the literature listed here?

10 A. Yes.

11 Q. There are a number of expert reports that are
12 listed. Were you given those expert reports as well?

13 A. Yes.

14 Q. Did you read the full reports?

15 A. I did.

16 Q. Of all of the expert reports that are listed
17 here?

18 A. I did.

19 Q. Then you were given internal Bard documents that
20 are listed here?

21 A. Yes.

22 Q. Did you read the full documents?

23 A. Not -- Well, not -- Maybe not all of them. But
24 if, for instance, sometimes on the reproduced copies I had
25 of -- of Kessler's, I couldn't necessarily read some of

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1 the graphs, I would look then to make sure I was reading
2 those correctly. But this report was -- I felt so
3 comfortable with what he wrote, that I didn't read all of
4 those, no.

5 Q. You felt so comfortable with the report that
6 Dr. Kessler wrote?

7 A. Yes.

8 Q. The material that is listed in Appendix A, Facts
9 and Data Considered, this is the material that you believe
10 was on the Dropbox?

11 (Interruption in proceedings.)

12 MR. LOPEZ: Maybe it's a little more annoying
13 than I thought.

14 THE WITNESS: I'm sorry, Matthew.

15 BY MR. BROWN:

16 Q. Let me ask the question again.

17 The material that's listed in Appendix A, which is
18 titled, "Facts and Data Considered," is that the material
19 that you believe was provided to you via Dropbox?

20 A. Yes.

21 Q. How did you pick these documents from among all
22 the documents that were produced in the litigation or were
23 they just provided to you?

24 A. No. They were from the report, so I would find
25 a section that Kessler had written, and it would have,

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1 say, a table or some specific quoted number that was
2 important to me in my argument, and I would say, "Well,
3 this refers to this document."

4 And so it was much like I wrote a medical article
5 when I'm quoting what the article says. You give it a
6 reference, and that's -- that's the way I used these.

7 Q. So am I correct that these are all documents
8 that you requested specifically?

9 A. I didn't specifically request them, but they
10 were in this -- in Kessler's report.

11 Q. Were some of the documents that are listed in
12 Appendix A, documents that you did not specifically
13 request?

14 A. It's possible. I suppose, I mean...

15 Q. Are you aware that over 1.5 million documents
16 have been produced in this litigation?

17 A. I'm not surprised.

18 Q. Is that the first time you've heard that figure?

19 A. I don't think it is, actually. I think I've
20 heard there's a large number.

21 Q. And there are 42 documents that are listed in
22 Appendix A?

23 A. Correct.

24 Q. So that's less than 0.0028 percent?

25 MR. JOHNSON: Form.

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1 A. It is. It is.

2 Q. Did you do any searching or review of the
3 documents and transcripts in that database in forming your
4 report here?

5 A. Yeah. Yeah.

6 Q. How did you access it, the database?

7 A. It was on a Dropbox, so you just...

8 Q. I thought you mentioned that you had -- there
9 was a Dropbox folder that contained material; and then
10 within the past week or two, there was another database
11 that you were given access to.

12 A. Right.

13 Q. Is this referring -- this sentence referring to
14 that newer database that you were just given access to?

15 A. No, no, no. This is -- This report was from --
16 from February and March, so it was the original Dropbox.

17 Q. This is referring to the Dropbox?

18 A. Correct.

19 Q. Which contained the information listed in
20 Appendix A?

21 A. Correct.

22 Q. Okay. The new database that you have been given
23 access to, have you accessed it?

24 A. I have.

25 Q. When did you access it first?

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1 A. Probably about -- Probably in the last, say, a
2 week ago.

3 Q. So about June 10th, 2017?

4 A. Right.

5 Q. Did you do any searching of materials that were
6 contained in that database?

7 A. I did, yeah.

8 Q. What did you search?

9 A. You know, like I said, if I had trouble reading
10 one of Kessler's things, and I was looking for something
11 to grasp or hard to read, I wanted to look and see, so I
12 would pull that document up.

13 Q. Okay. Other than pulling up individual
14 documents from Dr. Kessler's report that you wanted to
15 review, did you do any other searching of the material in
16 that database?

17 A. No. My -- My main focus was the Kessler report.
18 I guess in my report too.

19 Q. How did you access this database that you first
20 accessed about a week ago?

21 A. I'm not sure what you mean.

22 Q. Do you have -- Is it on the internet?

23 A. Yes. Yeah.

24 Q. Did you have to enter a user name and password
25 or something?